

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5261 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

S'NAGAR JILLA NMR KARMACHARI SANGH THRO' SECRETARY

Versus

EXECUTIVE ENGINEER

Appearance:

1. Special Civil Application No. 5261 of 1998
MR RV DESAI for Petitioner No. 1-15
MR UDAY BHATT AGP for Respondent No. 1-2
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CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 27/04/2005

C.A.V. JUDGEMENT

By way of filing this petition under Articles 226
and 227 of the Constitution of India, the petitioners
have challenged the Judgement and Award dtd.30/9/1997

passed by the learned Labour Court, Surendranagar in Reference (L.C.D.) No.19 of 1993 whereby the Labour Court rejected the reference preferred by the petitioners for regularizing the petitioners on the post of Work Assistant and for regular pay and other consequential benefits.

2. Learned counsel for the petitioners has mainly argued that the petitioners are discharging their duties since last more than 10 years on the post of Work Assistant, but they are not made permanent on the said post and not given regular pay scale and other benefits attached to the post; that though sufficient evidence was produced before the Labour Court showing that the nature of the work performed by the permanent Work Assistant and the petitioners are same, the petitioners are having requisite qualification and there are vacant posts and the petitioners are skilled workmen, but the Labour Court failed to appreciate the evidence and passed the erroneous Award rejecting the reference; that the Award is contrary to the evidence. He has also drawn my attention to the evidence of Umesh Bhanushankar Ex.10, Rajesh R.Gadhavi, Ex.14 on behalf of the petitioner. He has also drawn my attention to the evidence of Pravindhcnadra Kalubhai, Dy.Executive Engineer on behalf of the respondents wherein he has stated admitted that the workmen - petitioners herein, are skilled workmen right from the commencement of their service and all the petitioners are having requisite qualification of S.S.C.E. However, he has stated that the petitioners are not entitled to higher wage because, the petitioners are Rojamdars. He has further argued that as the petitioners are doing same work like regular employee, they are entitled to equal pay for equal work. He has further argued that the works performed by the petitioners are permanent in nature and hence the said work cannot be taken through Rojamdars and the petitioners are required to be made permanent, otherwise, it would amount to unfair labour practice. Consequently, he has submitted that the petitioners are working since more than 10 years, they are qualified, there are vacant posts and hence, the erroneous impugned Award may be quashed and the respondents may be directed to make the petitioners permanent. He has also placed reliance on the following citations;

[1] AIR 1974 SCC 555

[2] 2003 (2) GLH 9 and

[3] 2001 (1) GLH 465.

3. On the other hand, Mr.Uday Bhatt, learned AGP for the respondents State has opposed this petition

contending that as the petitioners have challenged the Award passed by the Labour Court, this petition is to be termed as under Article 227 of the Constitution of India, and not under Articles 226 and 227 of the Constitution of India, as stated by the petitioners in the cause title. He has further argued that the petitioners are demanding the benefits of Work Assistant which is a higher cadre and entirely a different post carrying a higher pay scale of Rs.1200-1800; that the petitioners are Rojamdars and have got the benefits of Government Resolution dtd.17/10/1988 and thus, they are getting benefits and pay like permanent workmen; that out of 15 petitioners, two petitioners namely Shri Gumansinh Madhubhai Mori and Shri Atul Manilal Dave, by virtue of the Govt. Policy and their seniority have been made Work Charge employees from Rojamdars vide order dtd.28/3/2000, and other 13 petitioners though are getting the benefits as aforesaid, but are still Rojamdars and they would be made Work Charge according to their seniority and rules and regulations in accordance with law; that Work Assistant can only be made from Work Charge employees or by direct recruitment as per rules and as and when the petitioners would become work charge employees, they have to put at least 10 years service as work charge employees in that cadre and they will have to fulfill the with other criteria like educational qualification, technical training etc. He has also placed reliance in the case of Delhi Development Horticulture Employees Union Vs. Delhi Administration, reported in AIR 1992 SC 789, more particularly para 13 to 15. Consequently, it is prayed that this petition may be dismissed with costs costs.

4. The main question which arises in this petition is as to whether the petitioners who are working continuously since more than 10 years are, entitled to be regularized in services on the post of Work Assistant or not.

5. After having examined the aforesaid facts and circumstances, relevant proposition of law and the decisions cited by the learned counsel for the respective parties, in view of the decision of the Larger Bench of this Court in the case of Amreli Municipality Vs. the case of Gujarat Pradesh Municipal Employees Union, reported in 2004 (3) G.L.R. 1981 and the decision in the case of Delhi Development Horticulture Employees Union Vs. Delhi Administration, reported in AIR 1992 SC 789, the Labour Court / Industrial Court cannot straightway direct the respondent for regularization of the petitioners without there being "sanctioned set up" and no person can be regularized if such a person had entered

service without following selection process under the title of daily rated employees. The Labour Court / Industrial Tribunal at the most can direct the respondents authorities to consider the claim of the petitioners provided they are eligible on the sanctioned posts instead of straight away passing the order of regularization of granting permanency and if the posts are not sanctioned, the respondents authorities may take such steps which are necessary in accordance with the provisions of law/rules/circulars within the budgetary provisions.

6. In view of the above, this petition stands dismissed. Rule is discharged. Interim relief stands vacated. The respondent authorities shall consider the case of the petitioners provided they are eligible on the sanctioned post and if the posts are not sanctioned, the authorities may take necessary steps as aforesaid.

(SHARAD D.DAVE, J.)

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